Filed 5/18/09 In re S.S. CA2/2

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re S.S., a Person Coming Under the Juvenile Court Law.	B212138 (Los Angeles County Super. Ct. No. CK33587)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. STACY S., Defendant and Appellant.	

APPEAL from a judgment of the Superior Court of Los Angeles County. Daniel Zeke Zeidler, Judge. Affirmed.

Lori A. Fields, under appointment by the Court of Appeal, for Defendant and Appellant.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County Counsel, William D. Thetford, Principal Deputy County Counsel, for Plaintiff and Respondent.

Appellant Stacy S. (mother) challenges the juvenile court's denial at the selection and implementation hearing of mother's petition (Welf. & Inst. Code, § 388)[1] seeking reunification services with her 10th child, S.S., then approximately six months old and now in an adoptive home. Mother contends that the court abused its discretion in denying her section 388 petition, and that therefore the order terminating her parental rights should be reversed. We find no abuse of the court's broad discretion and affirm, because mother failed to establish either that the circumstances had changed or that the child's best interests would be promoted by, in effect, delaying the adoption for six months to see if mother could complete her fifth drug treatment program.

FACTS AND PROCEDURAL SUMMARY

This is the third time mother has been before this court. On September 10, 2008, we denied mother's petition for extraordinary writ relief (Cal. Rules of Court, rule 8.452) challenging the juvenile court's order denying reunification services and setting a hearing to select a permanent plan for S.S. pursuant to section 366.26. (*Stacy S. v. Superior Court* (Sept. 10, 2008, B208641) [nonpub. opn.].) On December 22, 2008, we affirmed the juvenile court's order terminating the mother's parental rights to S.S.'s half-sibling, A. G., who was born at a park when mother was homeless. (*In re A. G.* (Dec. 22, 2008, B207927) [nonpub. opn.].) We reiterate some of the relevant facts by quoting as follows from our prior opinion in the writ proceeding involving S.S.

"[S.S.] is mother's 10th child. Mother has a 10-year history of drug abuse. She had lost custody of her remaining children either through voluntary relinquishment or because the juvenile court terminated her parental rights.

"After giving birth to [S.S.], mother was interviewed at the hospital by an individual who was assigned to talk with mother 'because she was informed that mother

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[1] All statutory references are the Welfare and Institutions Code unless otherwise indicated.

had 30 pregnancies and 10 births.'[2] During the interview, mother stated that she did not have custody of any of her children. Although she had been homeless in the past, she was currently living with her boyfriend Juan P. (Mr. P.)[3] Mother had prenatal care beginning in November 2007 and had tested clean for drugs at that time. She was not tested in the hospital because they had no reason to test her.

"On April 9, 2008, the Los Angeles County Department of Children and Family Services (DCFS) conducted an emergency Team Decision Making (TDM), which mother attended with [S.S.] Mother stated that since leaving the hospital two days prior, she had broken up with Mr. P. and was staying with friends. However, she had to move out of her residence and might move back in with Mr. P. Mother did not have access to a telephone but gave DCFS Mr. P.'s phone number. Mother did not have a job and previously had collected recycled items for money. She stated she had been 'clean for one year from [m]ethamphetamine and [m]arijuana.' She had attended a drug program in the past but did not have proof of it.

"The TDM team decided to detain [S.S.] DCFS requested that mother submit to on-demand drug testing and mother said she would do so later in the day. (Mother did so, and the test was negative.)

"DCFS filed a section 300 petition on April 14, 2008. The juvenile court ordered [S.S.] detained on that date.

"On May 8, 2008, mother enrolled in the Via Avanta Residential Long Term Treatment Program for substance abuse at the Didi Hirsch Community Mental Health

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[2] "Mother's medical records indicate that she reported 11 miscarriages, one stillbirth, and two elective abortions. Mother surrendered one child at Northridge Hospital under the "Safe Haven" program. The juvenile court terminated mother's parental rights to four of her children on June 2, 2005. A fifth child, two-year-old [A. G.], was a dependent child of the juvenile court at the time of [S.S.'s] detention. The court terminated mother's parental rights to [A.G.] on May 14, 2008.

[3] "Juan P. is not [S.S.'s] father. Mother stated that [S.S.'s] father was James S., whom she left because he was abusive. Mother did not know the address of James S.

Center in Pacoima. In a letter to DCFS dated May 13, 2008, a program counselor confirmed mother's enrollment and stated that all residents were 'randomly urinalysis drug tested.'

"A contested adjudication/disposition hearing was held on May 14, 2008. The court first addressed [A. G.'s] case, and terminated mother's parental rights as to him. As to [S.S.], the court admitted mother's stipulated testimony that she was still enrolled in the program at the Didi Hirsch Center. Mother's counsel argued for dismissal of the petition based on a lack of evidence that mother was currently using drugs. Mother had prenatal care, [S.S.] was born healthy, and mother had recently tested negative for drugs. Counsel for [S.S.] and DCFS urged the court to sustain the petition based on mother's 10-year history of drug abuse.

"The court sustained the petition 'as amended to conform to proof.' The sustained petition thus read:

> 'b-1 [¶] The child [S.S.'s] mother, Stacy M. [S.], has a 10-year history of substance abuse, has failed to complete programs previously and continues to lead an unstable lifestyle, which renders the mother incapable of providing regular care and supervision for the child. . . . The child's siblings . . . received permanent placement due to the mother's substance abuse. The mother's failure to formally and definitively resolve her substance abuse and the mother's unstable lifestyle endanger the child's physical and[/or] emotional health, safety and well being, creat[ing] a detrimental home environment and [placing] the child at risk of physical and emotional harm and damage.'

"The court then proceeded to the disposition portion of the hearing. In its report prepared for the disposition hearing, DCFS recommended that mother not receive family reunification services due to her '10-year history of abuse and relapse' and the fact that the juvenile court had terminated her parental rights to (at that time) four of her children. Counsel for [S.S.] also requested that mother not receive reunification services because she had not made reasonable efforts to treat the problems that led to the removal of

[S.S.'s] siblings. Counsel noted that mother had entered and left several rehabilitation programs, and although mother completed one program nine years before, she still had not been able to stay sober." (*Stacy S. v. Superior Court* (Sept. 10, 2002, B208641) [nonpub. opn.].)

Pursuant to section 361.5, subdivisions (b)(10) and (b)(11),[4] the court denied mother reunification services. The court ordered that mother be permitted visits with S.S. monitored by a DCFS-approved monitor. Thereafter, the court set October 29, 2008, as the date for a contested section 366.26 hearing.

On May 22 and 29, and June 6 and 12, 2008, the social worker transported S.S. for monitored visits with mother to Via Avanta, the mother's residential drug treatment center. Prior to mother entering the treatment program, she did not regularly visit. Mother missed a scheduled visit on May 2, 2008, and on April 25, 2008, left a visit 45 minutes early. The child cried during the visits, and mother's attempts to comfort her were unsuccessful.

The prospective adoptive couple was committed to adopting the child, and the adoptive home study was completed and approved in August of 2008. S.S. had been

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[4] "Section 361.5, subdivision (b), provides in pertinent part: "(b) Reunification services need not be provided to a parent or guardian described in this subdivision when the court finds, by clear and convincing evidence, any of the following: [¶] . . . [¶]

"(10) That the court ordered termination of reunification services for any siblings or half siblings of the child because the parent or guardian failed to reunify with the sibling or half sibling after the sibling or half sibling had been removed from that parent or guardian pursuant to Section 361 and that parent or guardian is the same parent or guardian described in subdivision (a) and that, according to the findings of the court, this parent or guardian has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling of that child from that parent or guardian.

"(11) That the parental rights of a parent over any sibling or half sibling of the child had been permanently severed, and this parent is the same parent described in subdivision (a), and that, according to the findings of the court, this parent has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling of that child from the parent."

placed with that prospective adoptive couple since the child was a few days old. DCFS recommended termination of parental rights upon receipt of S.S.'s birth certificate.

On October 8, 2008, mother filed a petition under section 388, seeking a court order requiring DCFS to provide mother with reunification services based on alleged change of circumstances and the purported best interests of the child. Attached to the petition were letters from mother's residential treatment program (dated May and September of 2008), and a certificate for completing 10 parenting classes. The May letter indicated that mother had entered the drug treatment program on May 8, 2008, and was in the orientation phase of the program. The September letter explained that the program consisted of three phases, and that mother would be completing the first phase the week after the date of the letter. The objective of the first phase was to assimilate mother into the program by teaching her the program guidelines and helping her become aware of her issues and problems. The letter also indicated that mother was drug testing and all tests were negative.

On October 15, 2008, the court set a hearing on mother's section 388 petition for October 29, 2008, the date scheduled for the section 366.26 hearing. The court also ordered DCFS to file a report addressing the petition.

DCFS's October 29, 2008, status review report and response to the section 388 petition recounted mother's completion of the 10-session parenting program, and mother's start of phase two at the drug treatment program. DCFS also noted that since the September 24, 2008, hearing, mother had visited S.S. six times. The child cried during almost the entire visit, until the later visits when she only cried occasionally. The prospective adoptive parents complained that mother was not changing the child's diaper during the visits and, because they had a long commute, they were afraid the child would get a diaper rash.

The social worker recommended that the juvenile court deny the mother's section 388 petition for reunification services and continue with the plan of adoption. The recommendation was based upon the mother's lengthy drug history, her past failed

recovery attempts, her relatively short (five month) period in drug treatment, her failure to reunify with her other children, the lack of any definite long-term plan for the time after mother's departure from the drug treatment program, and the lack of any verification of mother's claim that she had been drug free for over a year, and the child's need for stability and permanence, which the prospective adoptive parents were committed to providing.

On October 30, 2008, the juvenile court commenced the hearing on mother's section 388 petition. The court took judicial notice of all the sustained petitions, minute orders and disposition case plans for S.S. and her half-siblings. The court also received and considered the section 388 petition, DCFS's reports, and an October 29, 2008, letter from mother's drug treatment center.

Mother testified that she had previously participated in four drug rehabilitation programs. She believed that her current attempt to become free of drugs would be successful because she was tired of the drug lifestyle and of "going through trash cans to . . . make money, even though [she] made a decent amount of living." Mother acknowledged that S.S. had lived with her only four days before the child was detained. Since that time, mother had visited the child once a week, for two hours each visit, at the DCFS office.

Mother believed she would move to phase three of the drug treatment program in three weeks and would complete the treatment program in April of 2009. However, she admitted that was an estimate, and it could take longer to complete the program. Upon completion of the program, mother would be on her own and would return to the program once a week as an alumni to provide support and inspiration to the new clients. Mother asserted she had been drug-free since June of 2007. Mother believed that within the next six months she would be able to care for the child full time.

According to mother, during visits with S.S. she interacted with the child. There were no toys in the room, so much of the time she just talked to the child and they looked at pictures in a magazine. A couple of times S.S. was tired, and mother put her to sleep.

If necessary, mother changed her diaper and gave her a bottle. Mother did not know when S.S. had her last immunization shots, or how much she weighed, or the name of her pediatrician, or what she ate, or how many bottles of milk a day she drank.

Mother explained that the drug treatment program only tested her when she returned from being away from the facility, and she had only been tested twice there. But, she had also been tested for drugs at a different facility approximately 10 times, and she always tested negative. However, she asserted she had completed several of her prior drug treatment programs, but admitted that she had relapsed after each of the four prior treatment programs. Mother had not held a job since 2001. And, mother had never successfully reunified with any of her children.

After mother's testimony, her attorney asked the court to order reunification services. Counsel for S.S. did not believe mother had shown a change of circumstances or that granting her reunification services would be in the child's best interests.

The juvenile court remarked that mother's belief that she had made a decent living searching trash cans for items to recycle, did not auger well for her prospects to avoid a relapse. The court observed that mother's belief that the purpose of her weekly visits to the drug treatment facility after graduation was to inspire others and not to obtain after-care support for herself, indicated that mother was naïve and lacked an understanding that the rehabilitation did not end upon graduation from the program and that she should still have a lot of work ahead of her to maintain sobriety and develop stability. The court found that even with the progress mother had made, she had shown only "changing" and not "changed" circumstances, that S.S. had lived with her for only four days, that her only contact with the child was weekly two-hour monitored visits, and thus it would not be in the child's best interests to grant mother reunification services. The court denied mother's section 388 petition.

Regarding the section 366.26 aspect of the hearing, mother's counsel argued that parental rights should not be terminated because termination would be contrary to the child's best interests due to the bond that had purportedly developed between mother and

child during the weekly two-hour visits. The court found that S.S. was likely to be adopted and that no statutory exception to termination of parental rights was applicable. It thus terminated mother's parental rights.

Mother appeals from the orders terminating parental rights and denying her section 388 petition.

DISCUSSION

In a parent's section 388 petition, the parent has the burden of proving that the requested modification should be granted. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.) The parent must show a change of circumstances or new evidence, and that the proposed modification is in the child's best interests. (§ 388; Cal. Rules of Court, rule 5.570(e); *In re Casey D.* (1999) 70 Cal.App.4th 38, 47.) Whether a previously made order should be modified and whether the change would be in the child's best interests are questions resolved under the broad discretion of the juvenile court. (*In re Stephanie M., supra,* at p. 318; *In re Aaliyah R.* (2006) 136 Cal.App.4th 437, 447.) Thus, the juvenile court's decision will not be disturbed on appeal absent a showing that the decision was arbitrary, capricious, or patently absurd. (*Ibid*.)

Moreover, we review the section 388 issue in the context of the dependency proceeding as a whole. (See *In re Heather P.* (1989) 209 Cal.App.3d 886, 891.) Under section 388, "the change of circumstances or new evidence must be of such significant nature that it requires a setting aside or modification of the challenged prior order." (*Ansley v. Superior Court* (1986) 185 Cal.App.3d 477, 485.)

In the present case, the juvenile court initially denied mother reunification services pursuant to section 361.5, subdivisions (b)(10) and (b)(11). As we observed in our prior opinion in this case: "Those sections provide that reunification services need not be provided to a parent or guardian if the court finds, by clear and convincing evidence, that the court ordered termination of reunification services for any siblings or half siblings of the child and the parent has not subsequently made a reasonable effort to treat the problems that led to the removal of the other children. . . . [¶] . . . The juvenile court in

this case amended the petition to state that mother had failed to '"*formally and definitively resolve her* substance abuse."' . . . [¶] . . . The court had to evaluate whether mother, who had previously been unsuccessful in overcoming her substance abuse problem despite having been given reunification services, had reached a point in her life where she would benefit from such services. The court had to assess the situation in view of mother's history of brief periods of sobriety followed by relapses. Given that history, mother's announcement that she had stopped using drugs 'on her own' was not sufficient. The court was entitled to require a more 'formal' attempt at resolution—not a cure, but a more formal program and a demonstrated track record that would persuade the court that mother would be able to prevent another relapse. Mother's recent effort at sobriety, while laudable, did not rise to a level sufficient to entitle her to additional reunification services." (*Stacy S. v. Superior Court* (Sept. 10, 2008, B208641) [nonpub. opn.].)

At the subsequent hearing on the section 388 petition, mother revealed that she was then engaged in more formal attempt at resolving her problems. By the time the juvenile court denied her section 388 petition, mother had been in a drug treatment program for five months (and was in phase two of three phases of the program), and she had attended 10 parenting classes. However, mother admitted that in the past she had completed three of four other drug treatment programs, and thereafter had relapsed. The only significant difference between her past failed attempts at recovery and her current effort was that, on this occasion, she had not yet completed the program.

Mother's assertion that she now had resolutely addressed her drug program in a permanent way is, no doubt, a commendable step in the process of recovery. But, as the juvenile court aptly observed, she was again showing only "changing" circumstances, not "changed" circumstances.

Mother had never parented any of her 11 children. Ten parenting classes do not establish a significant change in her ability to parent. As indicated by her testimony, mother was ignorant of basic information regarding S.S.'s care, such as the child's weight

and immunization history, the pediatrician's name, and the child's daily requirements of food and milk.

Moreover, mother provided no facts to support her claim that the child's interests would have been promoted by six months of reunification services. Rather, mother complains that the juvenile court had "opined that [the child] had only lived with mother for 4 days and mother's visits had only been monitored for 2 hours a week." Mother also argues that there was no evidence that six months of reunification services would cause the child to suffer long-term emotional damage, but that factor is not determinative here. Although mother alleged in her section 388 petition that reunification services would be in the child's best interests because there was purportedly a strong bond between them and reunification would allow the child to return to her to mother's care, there simply is no evidence in the record of any such bond between mother and child. Indeed, mother's minimal contact with the child no doubt explains the lack of any evidence of a strong bond.

Finally, in assessing the best interests of the child, the court aptly noted that mother had no household, had not held a job in seven years, and had a history of relapsing after drug treatment programs. The court also was concerned that at the end of the next six months, at best, mother would be at the point of starting to look for housing and employment.

Accordingly, a showing of only changing, rather than changed, circumstances is insufficient under section 388. (See *In re Mary G.* (2007) 151 Cal.App.4th 184, 206.) Also, delaying S.S.'s permanency to see if mother, who has a drug relapse history and failed to reunify with 10 other children, might be able to reunify at some time in the future, does not promote the child's stability or her best interests. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 47.) "Childhood does not wait for the parent to become adequate." (*In re Marilyn H.* (1993) 5 Cal.4th 295, 310.)

Therefore, the juvenile court did not abuse its broad discretion in denying the section 388 petition, and there is no basis for disturbing its order terminating parental rights.

DISPOSITION

The orders under review are affirmed.

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BOREN, P. J.

We concur:

ASHMANN-GERST, J.

CHAVEZ, J.